97-1623

Supreme Court, U.S.
FILED
JUN 9 1998
OFFICE OF THE CLERK

[redacted]

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

UNITED STATES OF AMERICA,

Petitioner,

v.

LEON CLIFFORD FOSTER,

Respondent.

MOTION FOR LEAVE

TO PROCEED IN FORMA PAUPERIS

Respondent, LEON CLIFFORD FOSTER, requests leave to file the attached Respondent's Brief In Opposition To Government's Petition For Writ Of Certiorari to the United States Court of Appeals for the Ninth Circuit without prepayment of costs and to proceed in forma pauperis pursuant to Rule 39.1 of this Court and 18 U.S.C. § 3006A(d)(6).

The respondent has been represented by appointed counsel on appeal in the Ninth Circuit Court of Appeals.

RESPECTFULLY SUBMITTED this June 9, 1998.

Michael R. Levine
Assistant Federal Public Defender
Attorney for Respondent
101 S.W. Main Street, Suite 1700
Portland, Oregon 97204
(503) 326-2123

No. 97-8550

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

UNITED STATES OF AMERICA,

Petitioner,

v.

LEON CLIFFORD FOSTER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Michael R. Levine
Assistant Federal Public Defender
101 S.W. Main Street, Suite 1700
Portland, Oregon 97204
(503) 326-2123
Counsel for Respondent Leon Clifford Foster

I. STATEMENT OF THE CASE

Respondent accepts the government's statement of the case as set forth in its petition for certiorari.

II. REASONS FOR DENYING THE GOVERNMENT'S PETITION

The Court Should Deny The Government's Petition For Certiorari Because The Court Does Not Normally Grant Certiorari Merely To Correct An Error Of Law.

The government moves the Court to hold its petition for certiorari in abeyance pending the Court's decisions in *Muscarello v. United States*, No. 96-1654, and *Cleveland v. United States*, No. 96-8837. The Court decided those cases on June 8, 1998, and held that the phrase "carries a firearm," as used in 18 U.S.C. § 924(c), applies to a person who knowingly possesses and coveys firearms in a vehicle, including in the locked glove compartment or trunk of car, which the person accompanies. *See* 1998 WL 292058.

Respondent acknowledges that these decisions undermine the Ninth Circuit's reasoning in the instant case. Nevertheless, the government's petition for certiorari should still be denied. Even assuming *arguendo* that the Ninth Circuit erred in its result below, the Supreme Court is not merely "a forum for the correction of errors." *Boag v. MacDougall*, 454 U.S. 364, 368 (1982) (Rehnquist, C.J., dissenting); *see Watt v. Alaska*, 451 U.S. 259, 275 n.5 (1981) (Stevens, J., concurring) (the certiorari jurisdiction of the Court is "designed to serve purposes broader than the correction of error in particular cases.").

:::

III. CONCLUSION

For the foregoing reasons, the Court should deny the government's petition.

RESPECTFULLY SUBMITTED this June 9, 1998.

Michael R. Levine
Attorney for Respondent

No. 97-8550

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

LEON CLIFFORD FOSTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

CERTIFICATE OF SERVICE AND MAILING

I, Michael R. Levine, counsel of record and a member of the Bar of this Court, certify that pursuant to Rule 29.2, service has been made of the within **MOTION TO PROCEED IN FORMA PAUPERIS and RESPONDENT'S BRIEF IN OPPOSITION** on counsel for the petitioner by depositing in the United States Post Office, in Portland, Oregon on June

9, 1998, first class postage prepaid, a certified true, exact and full copy thereof addressed to:

Mr. Seth P. Waxman
Acting Solicitor General
Department of Justice, Suite 5614
10th & Constitution, N.W.
Washington, D.C. 20530

Further, the original and forty copies were mailed to the Honorable William K. Suter, Clerk of the United States Supreme Court, by depositing them in a United States Post Office Box, addressed to 1 First Street, N.E., Washington, D.C., 20543, for filing on June 9, 1998, with first-class postage prepaid.

DATED this 9 day of June, 1998.

Michael R. Levine
Attorney for Respondent

SUBSCRIBED AND SWORN to before me this 9th day of June, 1998, by Michael R. Levine.

Notary Public for Oregon
My Commission Expires: 8-14-98

OFFICIAL SEAL
AMY E. PERRY
NOTARY PUBLIC-OREGON
COMMISSION NO. 037043
MY COMMISSION EXPIRES AUG. 14, 1998